United Nations A/66/310

General Assembly

Distr.: General
18 August 2011

Original: English

Sixty-sixth session
Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, submitted in accordance with Assembly resolution 65/221 and Human Rights Council resolution 15/15.

* A/66/150.

11-45743 (E) 080911

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Summary

The present report is the first submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Assembly resolution 65/221 and Human Rights Council resolution 15/15. A brief introduction (sect. I) is followed by a description of the activities of the former and present Special Rapporteurs (sects. II and III).

The present Special Rapporteur shares several initial thoughts reflecting his interpretation of his mandate and how he intends to discharge it (sect. IV) and highlights some conclusions and recommendations (sect. V). He identifies two substantive areas of interest falling within that mandate — namely, the rights of victims of terrorism, and the prevention of terrorism — where, during the period of his tenure, he wishes to pursue the further development of efforts; and provides a concise discussion on how he would like to utilize some of the tools available to him in the discharge of his mandate, such as future country visits and cooperation with Governments and all pertinent actors, including relevant United Nations bodies.

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I. Introduction

1. The present report is the first report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. It is submitted pursuant to Assembly resolution 65/221 and Human Rights Council resolution 15/15. The report provides several initial thoughts of the present Special Rapporteur reflecting his interpretation of the mandate and how he intends to discharge it.

2. On 17 June 2011, Mr. Ben Emmerson was appointed Special Rapporteur on the promotion and protection of human rights while countering terrorism by the Human Rights Council at its seventeenth session and took office on 1 August 2011. The Council, in its resolution 15/15 of 7 October 2010, had decided to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for a period of three years.

3. A report on the work of the former Special Rapporteur, Martin Scheinin, undertaken since the submission of his last report to the Human Rights Council (sect. II), is followed by a description of the activities of the present Special Rapporteur (sect. III). In section IV, the present Special Rapporteur presents a preliminary discussion of his areas of interest in respect of the discharge of his mandate and in section V offers some conclusions and recommendations.

II. Activities of the former Special Rapporteur

4. The former Special Rapporteur took part in a regional expert symposium on securing the principles of a fair trial for persons accused of terrorist offences, held in Bangkok, on 17 and 18 February 2011, which was organized by the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism. The Task Force is chaired by the Office of the United Nations High Commissioner for Human Rights.

5. The former Special Rapporteur presented his annual report (A/HRC/16/51) to the Human Rights Council at its sixteenth session, on 7 March 2011. The report contained a compilation of 10 areas of best practices in countering terrorism. The compilation was the outcome of an analysis undertaken on the basis of his work conducted over almost six years which involved various forms of interaction with multiple stakeholders. The written submissions of Governments in response to a questionnaire of the Office of the High Commissioner related to the annual report of the Special Rapporteur were reproduced in full in an addendum to that report (A/HRC/16/51/Add.4). He also held an interactive dialogue with the Council on his report containing communications to and from Governments (from 1 January to 31 December 2011) (A/HRC/16/51/Add.1) and his reports on his missions to Tunisia (A/HRC/16/51/Add.2) and Peru (A/HCR/16/51/Add.3 and Corr.1).

6. On 11 March 2011, the former Special Rapporteur participated as a panellist in a discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking, pursuant to Human Rights Council decision 15/116 of 1 October 2010.

7. The former Special Rapporteur also participated as speaker in two side events, on progress towards a world court for human rights and on the operational

dimensions of human rights compliance in the prevention of terrorism, on 8 and 11 March 2011, respectively.

8. During the period from 3 to 11 March 2011, the former Special Rapporteur held meetings in Geneva with the Ambassadors of Burkina Faso, Djibouti, Mexico, Peru, the Philippines, Thailand and Tunisia, and with representatives of the Permanent Missions of Nigeria and the Russian Federation to the United Nations. He also met with a number of representatives of non-governmental organizations and held a press conference.

9. On 15 April 2011, the former Special Rapporteur appeared before the Tom Lantos Human Rights Commission of the United States House of Representatives in a hearing on human rights and counter-terrorism in the northern Caucasus.

10. On 19 April 2011, the former Special Rapporteur addressed the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament in Brussels during a hearing on the main achievements of, and future challenges for, the European Union counter-terrorism policy.

11. The former Special Rapporteur participated in the special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on the prevention of terrorism, held in Strasbourg, France, at the headquarters of the Council of Europe from 19 to 21 April, and co-organized by the Counter-Terrorism Committee and the Council of Europe.

12. The Counter-Terrorism Implementation Task Force convened an inter-agency meeting, on 12 and 13 May 2011, at the Greentree Estate, New York State, United States of America, which was attended by the former Special Rapporteur.

13. At the invitation of the Transitional Government of Tunisia, the former Special Rapporteur conducted a follow-up mission to that country from 22 to 26 May 2011. He had discussions with the Minister of Justice and Human Rights, the Minister of the Interior and Local Development, the Secretary of State for Foreign Affairs, the Prosecutor General for the Administration of Justice, the President of the fact-finding commission established to investigate human rights abuses since 17 December 2010, the spokesperson of the High Council for the realization of the objectives of the revolution, political reform and democratic transition, law enforcement officials, and representatives of the civil society, including lawyers. The former Special Rapporteur also visited the detention centre at Bouchoucha and Al Mornaguia Prison, where he interviewed persons, in private, suspected of terrorism-related crimes, and, upon the conclusion of his visit, issued a press statement.[1] The present Special Rapporteur will present the report on this follow-up mission to the Human Rights Council in 2012.

14. On the margins of the seventeenth session of the Human Rights Council, the former Special Rapporteur participated, on 1 June 2011, as a panellist in a discussion on the issue of the human rights of victims of terrorism, pursuant to Council decision 16/116 of 24 March 2011.

15. The former Special Rapporteur attended the eighteenth annual meeting of special procedures of the Human Rights Council, held in Geneva from 27 June to 1 July 2011. On 30 June 2011, he met with the Ambassador of Burkina Faso.

[1] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11066&LangID=E.

16. On 29 June 2011, the former Special Rapporteur held a press conference in Geneva on the human rights aspects of Security Council resolutions 1988 (2011) and 1989 (2011), both adopted on 17 June 2011 under Chapter VII of the Charter of the United Nations, pursuant to which the Taliban and Al-Qaida sanctions regimes were separated from each other.[2]

III. Activities of the present Special Rapporteur

17. On 8 August 2011, the present Special Rapporteur attended a meeting convened in London with lawyers, non-governmental organizations and parliamentarians involved in the Gibson Inquiry set up by the Government of the United Kingdom of Great Britain and Northern Ireland to examine allegations of collusion by officers of the British intelligence and security services in respect of acts of torture or inhuman or degrading treatment by officials of other States, during interrogations relating primarily to allegations of involvement in terrorism. The meeting was convened to address perceived shortcomings in the Inquiry's terms of reference and operating procedures. The Special Rapporteur subsequently received written communications on the subject from the United Kingdom Parliamentary Committee on Extraordinary Rendition, relevant non-governmental organizations and lawyers representing the victims. These communications and the issues to which they have given rise are under consideration by the Special Rapporteur, who is working in cooperation with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez.

IV. Preliminary outline of areas of interest to the present Special Rapporteur

18. The Special Rapporteur pays tribute to the work of his predecessor Martin Scheinin. He adopts and will aim to build upon, and elaborate, the 10 areas of best practice identified by Mr. Scheinin in his 2011 annual report to the Human Rights Council (A/HRC/16/51).

19. The Special Rapporteur would like to highlight some areas that are of interest to him in the discharge of his mandate, including the rights of victims of terrorism (subsect. A), the issue of prevention of terrorism (subsect. B), country visits (subsect. C) and cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, as well as non-governmental organizations and other regional or subregional international institutions (subsect. D).

A. The rights of victims of terrorism

20. The Special Rapporteur wishes to emphasize that, during the period of his tenure, he is committed to ensuring that proportionate attention is paid to the rights of direct and indirect victims of acts of terrorism, and the duties of States to actual and potential victims. Any sound, sustainable and comprehensive strategy for

[2] http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11191&LangID=E.

combating terrorism requires the recognition of the suffering of victims of terrorist acts. States have important duties in this regard. The first obligation of any State — indeed, a key component of its raison d'être — is to protect the lives of its citizens, and of all individuals within its territory and subject to its jurisdiction, which includes: the duty to take reasonable measures, within the lawful and proportionate exercise of State powers, and in a manner consistent with the protection of human rights, to prevent the materialization of a real and immediate risk to life; the duty to conduct thorough, independent and impartial investigations when it is plausibly alleged that this primary positive obligation has been violated; the duty to investigate and bring to justice the perpetrators of acts of terrorism in a manner consistent with international standards on the protection of human rights; and the duty to afford adequate reparation to direct and indirect victims of terrorism in cases where, on inquiry, it is established that the State has failed to discharge its primary obligation to take reasonable steps to prevent violations by non-State actors of the right to life or the right to physical security.

21. States also have broader duties with respect to supporting the victims of terrorism, even in cases where the relevant authorities have done all that can reasonably be required of them, within the lawful and proportionate exercise of their powers, to prevent acts of terrorism from occurring. The United Nations Global Counter-Terrorism Strategy[3] stresses "the need to promote and protect the rights of victims of terrorism"[4] and identifies the "dehumanization of victims of terrorism in all its forms and manifestations" as one of the conditions conducive to the spread of terrorism.[5] The 2005 World Summit Outcome stresses "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief".[6] In resolution 1963 (2010), the Security Council, while "(e)xpressing its profound solidarity with the victims of terrorism and their families", stressed the "importance of assisting victims of terrorism, and providing them and their families with support to cope with their loss and grief", recognized "the important role that victims and survivor networks play(ed) in countering terrorism, including by bravely speaking out against violent and extremist ideologies" and in that regard, welcomed and encouraged "the efforts and activities of Member States and the United Nations system, including the Counter-Terrorism Implementation Task Force (CTITF)" in this field.[7] Human Rights Council in its resolution 13/26 deeply deplored the suffering caused by terrorism to the victims and their families and expresse(d) its profound solidarity with them, and stresse(d) the importance of providing them with proper assistance.[8]

22. Dehumanization of victims of terrorism can take various forms, including reducing them to mere pretexts for justification of tougher counter-terrorism measures by States that violate human rights. The Special Rapporteur concurs with the statement made by his predecessor on the occasion of the Human Rights Council panel discussion on the issue of the human rights of victims of terrorism, namely, that Governments:

[3] General Assembly resolution 60/288, as reaffirmed by Assembly resolutions 62/272 and 64/297.
[4] General Assembly resolution 60/288, annex, sect. IV, chapeau.
[5] Ibid., annex, sect. I, chapeau.
[6] See General Assembly resolution 60/1, para. 89.
[7] See Security Council resolution 1963 (2010), nineteenth preambular paragraph.
[8] See Human Rights Council resolution 13/26, para. 3.

"may make public statements about terrorists violating human rights and the human rights of victims of terrorism being a priority compared to 'human rights of terrorists'. All too often, such words are mere rhetoric, and the Governments resorting to them fail to address the rights and concerns of victims of terrorism."[9]

23. The Special Rapporteur considers it essential that the protection of the rights of the victims of terrorism be perceived as a genuine legal duty resting primarily with States, and not misappropriated as a pretext for violating the human rights of those suspected of terrorism, for taking emergency measures that provide for exertion of excessive and disproportionate executive powers, or for other essentially political actions, and will be adamant in respect of holding States accountable whenever he considers that the obligation to protect rights of victims of terrorism is being used as a cover for repressive State action which is inconsistent with international standards on the investigation, trial and punishment of those alleged to have been involved in the preparation, instigation or commission of acts of terrorism.

24. Whereas the United Nations Global Counter-Terrorism Strategy makes a pledge to Member States to only "consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives",[10] the Special Rapporteur considers that States are bound by an international human rights obligation to provide for such assistance to victims of terrorism, including their families. In his view, however, the obligation goes further than that and includes, but is not limited to, the duty to prevent acts of terrorism; the duty, if they have occurred, to properly investigate, publicly disclose the truth and bring the perpetrators to justice; the duty to investigate any allegations of culpable failure on the part of State authorities, in the lawful and proportionate exercise of their powers, to take reasonable steps to prevent acts of terrorism; legal recognition of victims of terrorism; pecuniary compensation, including for moral damages sustained; rehabilitation; provision of health care and psychosocial and legal assistance; ensuring a safe environment for the return or, if impossible, the resettlement of persons displaced by acts of terrorism or counter-terrorism measures; provision of moral support; and fostering good community relations and providing human rights education as a means of furthering tolerance.

25. Reparation schemes put in place on the national level should follow certain principles, some of which are listed below by way of example. Reparation schemes should aim at full restitution and foresee individual and collective reparation for both victims of counter-terrorism measures by the State and victims of terrorist acts, and follow a participatory approach. National reparation mechanisms must be independent and provide for adequate, effective and prompt reparation, which includes their being readily accessible and their taking a gender perspective into account. Compensation must never become a substitute for bringing perpetrators to justice or for revealing the truth in compliance with applicable international human rights obligations. States may also choose to provide financial assistance to organizations supporting victims of terrorism in order to comply with their international obligations vis-à-vis victims of terrorism. On the other hand, the

[9] See http://www.ohchr.org/EN/Issues/Terrorism/Pages/Statements.aspx.

[10] See General Assembly resolution 60/288, annex, sect. I.

Special Rapporteur will also monitor hindrances to the work of victims support organizations, in cases where, for example, over-broad criminal provisions under the umbrella of "material support" to terrorism may result in obstruction of the efforts of those organizations.

26. The Special Rapporteur will focus on the situation of victims of terrorism and study the issue further while at the same time continuing to hold Governments to account, in a spirit of constructive and open dialogue, for other human rights violations in the context of countering terrorism.

27. The Special Rapporteur considers that the model provisions on reparations and assistance to victims contained in his predecessor's report to the Human Rights Council on 10 areas of best practices in countering terrorism[11] as well as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[12] provide useful standards and guidance, including on best practices.

28. The Special Rapporteur is inspired by initiatives taken by States and international organizations to put the plight of victims of terrorism in the agenda and to promote a human rights-based approach in addressing that issue, including the 9 September 2008 symposium hosted by the Secretary-General on supporting victims of terrorism;[13] the 2010 workshop on a study of best practices on supporting victims of terrorist crimes and related offences as defined in national and international law, held in Siracusa, Italy, and co-organized by the International Institute of Higher Studies in Criminal Sciences and the Counter-Terrorism Implementation Task Force, which has formed a dedicated Working Group on Supporting and Highlighting Victims of Terrorism; the panel discussion held on 1 June 2011 on the issue of the human rights of victims of terrorism pursuant to Human Rights Council decision 16/116; and Council resolution 17/8 which recommended that the General Assembly proclaim 19 August as the International Day of Remembrance of and Tribute to the Victims of Terrorism.

B. Prevention of terrorism

29. Another substantive issue falling within his mandate on which the Special Rapporteur would like to focus during the period of his tenure is that of the prevention of terrorism. It is now widely accepted that by promoting and protecting all human rights under their obligations to be fulfilled pursuant to international human rights law, Member States are also actively preventing terrorism by addressing the conditions conducive to it, although, in the view of the Special Rapporteur it is very clear that none of these conditions can justify or excuse acts of terrorism. The Global Counter-Terrorism Strategy clearly places human rights squarely at the centre of the fight against terrorism and emphasizes that (a) measures taken to counter terrorism must comply with international human rights law;[14] (b) respect for all human rights for all and the rule of law is the basis of the fight

[11] See A/HRC/16/51, para. 25.

[12] General Assembly resolution 60/147, annex.

[13] See http://www.un.org/terrorism/pdfs/UN%20Report%20on%20Supporting%20Victims%20of%20Terrorism.pdf.

[14] See General Assembly resolution 60/288, annex, para. 3.

against terrorism and essential to all components of the Strategy;[15] and (c) that the denial of human rights and the rule of law might, in itself, create conditions that are conducive to terrorism.[16] Security Council resolution 1963 (2010) not only echoes pillar I of the Strategy, which reiterates that violations of human rights are one of the conditions conducive to the spread of terrorism, but goes a step further by introducing a positive formulation. For the first time in a resolution, the Council recognized that terrorism would not be defeated by military force, law enforcement measures, and intelligence operations alone, and underlined, inter alia, the need to strengthen the protection of human rights and fundamental freedoms.[17]

30. In this context, the Special Rapporteur is convinced that by deepening understanding of the link between neglect of human rights and grievances — actual or perceived — that cause individuals to make the wrong choices, conditions conducive to the spread of terrorism could be more effectively addressed. The interrelation between respect for all human rights — civil, cultural, economic, political and social — and prevention of terrorism deserves further attention. Examining this link has the potential to result in assistance to Member States in formulating effective policies to prevent terrorism, while respecting and complying with human rights obligations. The fact that human rights featured prominently in the agenda of the above-mentioned April 2011 special meeting of the Counter-Terrorism Committee with international, regional and subregional organizations on the prevention of terrorism at Council of Europe headquarters in Strasbourg is an encouraging sign.

31. The two substantive areas identified above as being of interest shall by no means be regarded as constituting an exhaustive focus. The Special Rapporteur will deal with all other issues within the scope of his mandate when and as they arise.

C. Country visits

32. In terms of planned country visits, the Special Rapporteur has received an invitation to visit Burkina Faso during the course of 2011. The Government of Chile has indicated that a country mission could be conducted in 2012.

33. There are outstanding visit requests from Algeria, Malaysia, Nigeria, Pakistan, the Philippines, the Russian Federation and Thailand. The Government of Egypt, in the interactive dialogue with the Human Rights Council and with the former Special Rapporteur, on 7 March 2011, stated that it had benefited from the detailed discussions held during the country visit of the former Special Rapporteur to Cairo in April 2009 and gave its assurance that the request for a second visit would be seriously and positively examined, together with other requests under special procedures mandates, as soon as the current transitional phase in the political and governmental organization of Egypt had been completed.

34. In terms of envisaged country missions, the Special Rapporteur emphasizes that when requesting invitations for country visits from Governments, he, like his predecessor, will continue to pay due regard to the partnering countries of the Integrated Assistance for Countering Terrorism (I-ACT) initiative of the Counter-

[15] Ibid., annex, sect. IV, chapeau.

[16] Ibid., annex, sect. I, chapeau.

[17] See Security Council resolution 1963 (2010), fourth preambular paragraph.

Terrorism Implementation Task Force. In accordance with pillar III of the United Nations Global Counter-Terrorism Strategy on "measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard" and the recognition "that capacity-building in all States is a core element of the global counter-terrorism effort",[18] the Task Force aims to enhance the capacity within the United Nations system to help interested Member States, upon their request, implement the United Nations Global Counter-Terrorism Strategy in an integrated manner across its four pillars.

35. Country missions of the Special Rapporteur provide an excellent opportunity to contribute, in particular, to the identification of gaps, if any, in the implementation of pillar IV of the Global Counter-Terrorism Strategy on "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", and enable the human rights entities of the Task Force to assist the respective Government in fully implementing the Strategy. As indicated, Burkina Faso, as one of the pilot partnering countries of the I-ACT initiative, has accepted the request by the Special Rapporteur for an invitation to undertake such a country visit. The Special Rapporteur would like to thank the Government of Burkina Faso for the invitation and expresses his hope that the Government of Nigeria, as another pilot partnering country, will extend an invitation as well.

D. Cooperation

36. In its resolution 65/221, the General Assembly welcomed the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism (para. 12).

37. In its resolution 15/15, the Human Rights Council requested the Special Rapporteur to develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, with, inter alia, the Counter-Terrorism Committee of the Security Council, including its Executive Directorate, the Counter-Terrorism Implementation Task Force, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and treaty bodies, as well as non-governmental organizations and other regional or subregional international institutions, while respecting the scope of his or her mandate and fully respecting the respective mandates of the above-mentioned bodies and with a view to avoiding duplication of effort (para. 2 (f)).

[18] See General Assembly resolution 60/288, annex, sect. III, introduction.

38. The Special Rapporteur looks forward to implementing the provisions of these resolutions and, in regard to cooperation with relevant United Nations bodies, is encouraged by the supportive letters received from the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, as transformed, pursuant to Security Council resolution 1989 (2011), into the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, and from the Executive Director of the Counter-Terrorism Committee Executive Directorate. The Special Rapporteur also hopes to continue the cooperation with the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) concerning counter-terrorism and the Security Council Committee established pursuant to resolution 1988 (2011), that was achieved by the former Special Rapporteur with the former Security Council Committee established pursuant to resolution 1267 (1999).

V. Conclusions and recommendations

39. Since the Special Rapporteur assumed his mandate only on 1 August 2011, he takes the opportunity in the present report to provide a preliminary outline of his areas of interest pursuant to the discharge of his mandate, regarding which he will develop recommendations.

40. While building and elaborating on the compilation of the 10 areas of best practice prepared by his predecessor (see A/HRC/16/51), the Special Rapporteur intends to ensure that proportionate attention is paid to the rights of direct and indirect victims of acts of terrorism, and to the duties towards actual and potential victims that States are obligated to fulfil.

41. Furthermore, the Special Rapporteur would like to focus during the period of his tenure on the issue of prevention of terrorism through, promotion and protection of human rights, and in compliance with obligations under, human rights law.

42. In addition, the Special Rapporteur seeks to conduct visits to partnering countries of the "Integrated Assistance for Countering Terrorism" initiative of the Counter-Terrorism Implementation Task Force. Moreover, the Special Rapporteur intends to continue to cooperate with Governments and all pertinent actors, including relevant United Nations bodies, specialized agencies and programmes, as well as non-governmental organizations and other regional or subregional international institutions.

43. The Special Rapporteur wishes to emphasize that while the present thematic report focuses, inter alia, on the rights of victims of terrorism, this dimension of the mandate will in no sense detract from the importance of ensuring compliance of States with their human rights obligations in respect of the investigation, prosecution and punishment of those alleged to have engaged in the preparation, instigation or commission of acts of terrorism. These twin imperatives are complementary and form the dual pillars essential to the maintenance of effective human rights-compliant anti-terrorism initiatives. The Special Rapporteur emphasizes that both sets of obligations involve duties resting primarily on States. The essence of lawful State action in the context of anti-terrorism strategies lies in the striking of a fair and proportionate balance

between two sets of duties. While the striking of that balance is, in the first instance, a matter for national authorities, it is subject to international supervision.

44. **The Special Rapporteur will contribute to that supervision by closely scrutinizing the manner in which States have struck that balance, and by seeking to identify those situations in which States have inflicted further harm on the victims of terrorism by misappropriating their plight as a pretext for excessive or oppressive executive action, or as a justification for the violation of human rights.**